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90-1002

No. _____

Supreme Court, U.S.
FILED
DEC 15 1990
JOSEPH F. SPANIOLO, JR.
CLERK

IN THE
SUPREME COURT
OF THE UNITED STATES

October Term, 1990

RICHARD G. KASCHAK,
Petitioner,

vs.

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF KERN
Respondent,

PINE MOUNTAIN CLUB PROPERTY
OWNERS ASSOCIATION

Real Party
In Interest.

ON PETITION FOR WRIT OF
CERTIORARI IN THE CALIFORNIA
COURT OF APPEAL FOR FIFTH
APPELLATE DISTRICT

PETITION FOR A WRIT OF CERTIORARI

RICHARD G. KASCHAK
1928 Carmen Avenue
Hollywood, Calif.
90068 (business adr.)
(213) 462-8803
Pro Se Petitioner

December 15, 1990

QUESTIONS PRESENTED FOR
REVIEW

1. Is it not a violation of Due Process Of Law (14th Amendment, U.S.C.A.) to invalidate a homestead declaration in a summary proceeding on three hearsay declarations; the declarants of which are not otherwise present in court for confrontation and cross-examination?
2. Is it not a violation of Due Process Of Law (14th Amendment, U.S.C.A.) for an Appellate Court to ignore and to otherwise omit, without any reference, an issue raised on appeal about the correctness of a summary proceeding based solely on hearsay; the effect of which was to deprive Petitioner of his Homestead Exemption granted by California Law?

3. Are not the two errors above, considered in combination, a denial of Due Process Of Law (14th Amendment, U.S.C.A.)?

4. Does not Due Process Of Law require an impartial decision Maker?

5. Is the time ripe for the Supreme Court Of The United States to review and to protect defendant's in pro per Due Process Of Law rights from lower court abuse?

LIST OF PARTIES

The parties to the proceedings are those that appear on the caption of the case pursuant to Rule 14.1 (b).

Richard G. Kaschak, Petitioner
in Pro Per.

Superior Court Of California,
Appellate Dept, County Of Kern,
Respondent.

Pine Mountain Club Property
Owners' Association, Real Party
In Interest. Their legal counsel
and law firm noticed to petitioner
on October 22, 1990, is Dixon Kummer
of the law offices of Borton, Petrini,
& Conron.

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IN THE SUPREME COURT
OF THE UNITED STATES
October Term, 1990

RICHARD G. KASCHAK,
Petitioner,
vs.

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF KERN,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE CALIFORNIA COURT OF APPEAL
FOR THE FIFTH APPELLATE DISTRICT.

The petitioner, Richard G. Kaschak respectfully prays that a writ of certiorari issue to review the denial for request for petition for writ of certiorari of the California Court Of Appeal for the Fifth Appellate District, entered and filed in the above entitled proceeding as follows:

1st petition dated April 18, 1990

2nd Petition dated May 14, 1990

3rd Petition dated July 7, 1990

The Supreme Court of the State of California denied petitioner's petition for review on September 19, 1990.

OPINIONS BELOW

The opinion of the Superior Court, Appellate Department, State of California, County of Kern, is re-typed in the appendix hereto, page 3a infra.

The opinion of the Justice Court, County of Kern, State of California is also in the appendix hereto page 1a.

JURISDICTION

Petition to the Court Of Appeal of the State of California for the Fifth Appellate District was denied on May 3, 1990, and on August 9, 1990.

Petition For Rehearing to the Court of Appeal was erroneously & falsely accepted by the Court Of Appeal and denied on May 31, 1990. This action was rebuked by California Supreme Court; ordered refund of petitioner's monies.

Petition For Review of Decision
Of The Court Of Appeal of the State
of California for the Fifth Appellate
District was made to the Supreme Court
of the State of California on August 17,
1990. On September 19, 1990, the Supreme
Court Of The State Of California, DENIED
petitioner's petition for review.

This petition for certiorari is
filed within 90 days of September 19,
1990, and the Supreme Court Of The
United States jurisdiction is invoked
under Title 28, United States Code,
Chapter 81, Sec. 1257 (3).

**CONSTITUTIONAL AND STATUTORY
PROVISIONS INVOLVED**

FOURTEENTH AMENDMENT, United States Const:

"Section 1....nor shall any State deprive any person of life, liberty, or property without due process of law..."

**CALIFORNIA CODE OF CIVIL PROCEDURE:
ARTICLE 5. DECLARED HOMESTEADS**

Sec. 704.910 Definitions

Sec. 704.920 Selection Of Declared Homestead

Sec. 704.930 Homestead Declaration, Contents, Execution, Facts; Authority

Sec. 704.950 Judgment Lien and Attachment

"...A judgment lien on real property.....does not attach to a declared homestead."

(1) "...declared homestead was recorded prior to time of the judgment."

Sec. 704.730 Amount of Homestead Exemption

(1)\$30,000

(2)\$45,000

STATEMENT OF THE CASE

During the year of 1979, Petitioner, Richard G. Kaschak, built a 2-bedroom 2-bath home at Pine Mountain Club, a rural housing development in Frazier Park, County of Kern, State of California; approximately 65 miles north of the city of Los Angeles, California. The area is wooded and mountainous, and by Los Angles standards considered as remote.

This fee simple land is encumbered by Pine Mountain Club Property Owners Association, Inc., and annual dues were paid to real party in interest until the time in question.

After a dispute over director's violation of the covenants & conditions by Pine Mountain Club, Petitioner, Kaschak, with-held dues payments from this breaching organization.

Real Party In Interest (Plaintiff) then commenced an action against Petitioner in the Maricopa-Taft Justice Court. This is a statutory court with jurisdiction up to \$25,000 (CCP Sec. 86).

A judgment resulted against petitioner in the amounts of \$3,349.87 (back dues) and \$8,406.62 undocumented attorney fees; thus for a total judgment of \$11,815.49.

This judgment was filed on July 11, 1986. The judgment provided that it be lien against petitioner's Pine Mountain home property and that it be sold by the Marshall.

However, petitioner had previously filed a Declaration Of Homestead on September 17, 1982, pursuant to CCP Sec. 704.730 et seq. which provides, *inter alia*, that a judgment shall not be a lien on a declared homestead; that the homesteaded property is exempt from execution for amounts up to \$45,000. Thus the Marshall did not hold a sale of petitioner's validly declared homesteaded home.

There then followed on August 15, 1988, a Motion in the Justice Court "to invalidate" petitioner's valid homestead declaration on the grounds that petitioner did not "reside" at the property (14409 Voltaire Drive, Pine Mt. Club, Frazier Park, California, 93225), as required by CCP Sec. 704.910.

An application to sell petitioner's home was simultaneously filed with the motion; both were heard on August 15, 1988.

The motion and application were merely supported by four (4) declarations:

- (1) A declaration of Debra Tilson Lambeck, (trial attorney for Pine Mt. Club) setting forth the legal status of the property;
- (2) A declaration of Richard McMillan a "part time resident" of Pine Mt. Club; stating that petitioner is in residence

only "several week-ends during the year";

(3) A declaration of Mel McColloch, chief operating office of Pine Mt. Club Association, stating that petitioner gave a Hollywood address for mailing purposes, and

(4) A declaration by J. Ace Carter, a PAID for private investigator (for trial attorney Debra Tilson Lambeck for Pine Mt. Club) who stated that petitioner's voter registration of 1970 showed a Hollywood, California address.

(Note: Petitioner's home was not built until December 1979)

The motion to invalidate the homestead declaration and to order the sale of the Pine Mt. homesteaded property was continued to October 28, 1988, before the same Judge who rendered the judgment against the petitioner.

At this motion hearing, no new evidence was produced; the declarants themselves DID NOT appear, and the Justice Court decided the motion on the arguments of Pine Mt. Club counsel and the hearsay declarations.

Petitioner represented himself at the motion hearing and attempted to refute Pine Mt. Club's (Plaintiff) declarations.

FIRSTLY: The declaration of Richard McMillan was not true because his house is more than a block away from petitioner's homesteaded home; separated by several houses and huge pine trees. Thus it was physically impossible for McMillan to express the opinion that he did in his declaration. Additionally, McMillan was at that time President of Pine Mt. Club Property Owners Assoc; the very group which obtained the judgment against petitioner. Plainly he was a biased & prejudiced party, and his declaration was perjured.

SECONDLY: Petitioner proved in Court that

Club government operated post office; contrary to the declaration of Mel McColloch who testified that petitioner had a Hollywood mailing address. Furthermore, McColloch had only been at Pine Mt. Club for approximately 6-months; he never asked petitioner for a local mailing address.

At no time did any of the declarants appear personally in the Justice Court to testify despite the fact that the Judge placed Petitioner under oath for testimony and offered Pine Mt. Club's attorney the opportunity to cross-examine petitioner.

And on December 14, 1988, the Justice Court ruled in Pine Mt. Club's favor; ordering the sale of petitioner's validly declared homesteaded home to pay the judgment in favors of the Pine Mt. Club Association.

Petitioner, pursuant to applicable California law, then appealed to the

Appellate Department of the Superior Court, a higher trial court, but sitting as an appeals court. Petitioner there argued that the procedure followed below was improper; especially since it denied petitioner the right to confront and cross-examine the witnesses against him.

Nevertheless, the Superior Court affirmed the Justice Court in an opinion which made no reference to; and did not consider petitioner's argument that he was entitled to cross-examine the witnesses against him before his homestead home was sold outright by the marshall.

Petitioner then filed two separate petitions for writ of certiorari with the Court Of Appeal, Fifth Appellate District, State Of California; both of which raised as an issue the failure of the Superior Court to address issues raised before them; again rasing the issue that petitioner had been denied his right of cross-examination.

Yet both petitions (May & August) were denied by the California Court Of Appeal. In fact a Petition For Rehearing (May 31, 1990) was erroneously & falsely accepted (along with filing monies) by this Court Of Appeal; later rebuked and corrected by the California Supreme Court; ordered refund of petitioner's monies.

Petitioner's subsequent Petition For Review by the California Supreme Court was denied by order of September 19, 1990.

ARGUMENT FOR GRANTING THE WRIT

PRELIMINARY STATEMENT

Petitioner, Richard G. Kaschak, is representing himself in propria persona. He has attempted throughout this proceeding to voice, however inarticulately, that his real property was being taken by the Court for the benefit of his creditors without due process of law; a summary disposition supported only by hearsay without the right to confront and cross-examine the witnesses against him.

This error was compounded by the Appellate Courts which affirmed a judgment and denied relief without passing on the petitioner's argument that he be entitled to cross-examine the perjured declarations of respondent's case. But respondent failed to produce witnesses and petitioner's real property was taken; virtually forfeited and seized, based on a mere hearsay declaration alone.

Petitioner was in compliance with CCP Sections: 704.910, 704.920, 704.930, and 704.950 pertaining to declared homestead law.

I.

DUE PROCESS REQUIRES
CROSS-EXAMINATION

The Petitioner raised the specter of perjury and impossibility about respondent's proof from the earliest moment. Yet the Justice Court found for respondent on those declarations alone.

(a)

STATE ACTION

As the 14th Amendment to the Constitution Of The United States is a limitation on State Action only, nonetheless it is clear that this action may be found by a State Court enforcing a private right. Such was the case in New York Times v Sullivan, 376 U.S. 254 (1964), and more recently, and more in point, in Sniadach v Farily Finance Corporation Of Bay View, 395 U.S. 337 (1968), which nullified a state law providing for a creditor's pre-trial garnishment of wages.

Similarly, here, to the extent court rules allow a summary disposition of real property, State Action is also involved.

(b)

HEARSAY IS NOT
SUBSTANTIAL
EVIDENCE

Insofar as the judgment below rests upon the hearsay declarations alone, it is clear that this fact by itself raises a due process problem. This Court has held that "mere uncorroborated hearsay or rumor does not constitute substantial evidence." Consolidate Edison Co. v. N.L.R.B., 305 U.S. 197 (1938). Plainly there are exceptions to the hearsay rule applicable here. So, we are then talking about unreliable, untrustworthy evidence, i.e. the rationale for the exclusion of hearsay evidence.

Put differently, in an adversary

the decision maker's conclusion rest
solely on the legal rules and the
evidence adduced at the hearing.

Thus In Re Japanese Electronics Products
Antitrust Litigation, 631 F2d 1080, 1084,
(3 Cir 1980). (Emphasis supplied)

Clearly, if the declarations are untrustworthy, the only, or principal way to show this is by cross-examination. But where the witnesses do not appear, this line of defense is precluded. Yet this Court has held that Due Process requires that there be an opportunity to present every available defense. American Surety Co. v Baldwin, 287 U.S. 156, 168 (1932).

This case is not like a school discipline where the mere opportunity to be heard in opposition to reports and advice of other alone satisfies the Due Process requirements. Goss v Lopez, 419 U.S. 565 (1975). Nor is it a case where No Trial type hearing is required at all. Cafeteria & Restaurant Workers Union v Mc Elroy, 367 U.S. 886 (1961).

This is not a case where a governmental entitlement is being revoked. The case is clearly one of taking private property by summary proceeding; where the right to probe the declarants for bias and prejudice by cross-examination is foreclosed, and which, therefore, raises Due Process questions. Ellis v Capps, 500 F2d 225 (5 Cir. 1974).

Due process requires that petitioner have the right to fully and fairly litigate each issue in his case. Du Pont v Southern National Bank, 771 F2d 874, 880 (5 Cir. 1985).

When the issue turns on credibility, as it does here, a plenary fact finding procedure must be had immediately.

Ali v I.N.S., 661 F Supp, 1234,1250, (D. Mass, 1986). To deny a full defense on the issues is a denial of Due Process. Western Electric v Stern, 544 F 2d 1196, 1199 (3 Cir, 1976).

(c)

DUE PROCESS REQUIRES
THE RIGHT TO CROSS EXAMINE
WITNESSES IN CIVIL CASES

While we have found no Supreme Court case holding the proposition here advanced, it is generally believed and widely taught that Due Process requires a right to cross-examine witnesses even in a civil action. Nowak, et al, Constitutional Law 2d Ed (1983), at 555-556.

But several lower courts have had no problem expressing the point. Therefore, the Third Circuit has opined that the right to cross-examination inheres "in every adversary proceeding", and if such examination of an available witness is denied, the litigant has been deprived of Due Process. Derewecki v Pennsylvania Railroad Co., 353 F 2d 436, 442 (3 Cir 1965).

Similarly, the Eighth Circuit has declared that a party has a right to cross-examine available witnesses; otherwise

the litigant is deprived of Due Process. Nevels v Hanlon, 656 F 2d 372, 376, (8 Cir. 1981). (There is no indication that the witnesses here were unavailable. And in a case not entirely dissimilar from the present one, the Seventh Circuit has held that pre-filed declarations are no substitute for the witnesses being sworn in open court; identifying their testimony as their own, and being subject to cross-examination.

To make findings on hearsay declarations alone is a denial of Due Process. Chicago Ridge Theatre Limited Partnership v M & R Amusement Corp. 855 F 2d 465, 468 (7 Cir. 1988).

(d)

GOLDBERG V. KELLY
REQUIRES A PLENARY
HEARING

Above we argued that Due Process requires, negatively, that a judgment not be based on hearsay alone; that even a summary proceeding requires the right to confront and cross-examine witnesses.

Here we seek to show that a summary proceeding, such as below, does not meet the requirement of Due Process as articulated by this Court.

More particularly, attention is directed to Matthews v Eldridge, 424 U.S. 319 (1975) which developed a weighing test for determining when and what kind of hearing Due Process requires; characterized as a utility test. Nowak, supra, at p 555. But the base line of Matthews is that Due Process guarantee is one of fairness; that the process employed will be fundamentally fair in the resolution of factual and legal disputes. Ibid, at p 335.

Presaging the Matthews test, however, was Goldberg v Kelly, 397 U.S. 254 (1970) which required an administrative hearing before welfare benefits were terminated. But in expressing the plurality opinion, Justice Brennan showed that the question was whether the recipient's interest outweighed the government's in summary adjudication. Furthermore, in determining that a prior hearing must be held, the Court had no difficulty in describing the kind of hearing to be had; that is the recipient was entitled to be heard in a "meaningful manner." Ibid, at 267.

This meant that the litigant was to have an effective opportunity to defend "by confronting any adverse witness" and having the right to cross-examine any such witness. Ibid, at 268.

But the court went even further, declaring as if foreseeing the present case; that "particularly where credibility and veracity are at issue, written submissions are a wholly unsatisfactory basis

for decision." Ibid. at 269
(Emphasis supplied)

Clearly, this language applies to the present case. Surely the deprivation of real property, representing a life's savings, is no less important than a welfare recipient's right to support.

Justice Brennan concluded by saying that "in almost every setting where important decisions turn on questions of fact, Due Process requires an opportunity to confront and cross-examine witnesses." Ibid at 269. (Emphasis supplied.)

Plainly Goldberg required the respondent in this case to produce its witnesses for testimony under oath in open court and subject to petitioner's right to cross-examine them to meet the requirement of Due Process.

II.

THE FAILURE OF THE
APPELLATE COURT TO
CONSIDER THE QUESTION
REQUIRES REVERSAL.

As pointed out above, petitioner argued that the California Appellate Court ignored and omitted to consider the issue he raised on appeal that the hearsay declarations and the lack of opportunity to cross-examine the declarants deprived him of Due Process under law.

Here the California Constitution requires only the Court Of Appeal and the Supreme Court to render their decisions in writing. California Constitution, Article VI, Sec. 14.

The Superior Court, even when sitting as an Appellate Court is not required to do so. But certainly almost all the recent cases require the decision maker to issue reasons for his decision. See e.g., Goldberg, supra.

As a corollary to this rule, it seems clear that the decision should consider the defense and at least refer to it, if not directly pass on it. Could it be that a governmental administrative agencies are to be held to a higher standard than Constitutional Courts of the States, constituted specifically as Courts Of Appeal?

Even if it is to say the the other contentions of counsel do not merit discussion, such an indication would at least indicate the the Appellate Court analyzed all contentions on appeal before reaching a conclusion.

See People v Rojas, 118 Cal App 3d 278, 290 (1981).

When in combination with hearing error, the Court Of Appeal ignores the contention about the very same error, can it be said that Petitioner has received Due Process of law?

III.

IT WAS A DENIAL OF
DUE PROCESS FOR THE
JUDGE NOT TO REVEAL
HIS RELATIONSHIP TO
A PRINCIPAL WITNESS

After the Justice Court hearing was concluded, Petitioner discovered in the local newspaper that both the trial judge, Robert Deabenderfer, and declarant Mel McColloch (declarant against petitioner) attended a political testimonial dinner together. Petitioner had no knowledge at the time of the hearing that the two knew each other; but learned only after the trial when the article appeared in the local newspaper.

Petitioner raised the possibility of prejudice by the trial court on his appeal to the Superior Court. However, the Court said that it was raised too late. But petitioner could not have raised it sooner as he did not suspect

the Judge and the witness (non-appearing declarant) knew each other.

In such cases, however, this Court has held that "Justice must satisfy the appearance of Justice" even if the judge has no actual bias. The right to an impartial and disinterested tribunal is a guarantee of the Due Process Clause which applies equally to criminal and civil trials.

Marshall v Jerrico Inc., 446 U.S. 238.

IV.

DEFENDANT IN PRO PER DUE PROCESS
ABUSE BY THE LOWER COURTS IS AN
ISSUE RIPE FOR REVIEW BY THE
SUPREME COURT OF THE UNITED
STATES

A defendant in pro per should not be abused and taken advantage of because of the intricate and complex court system and its legal procedures.

Just because an in pro per (who cannot qualify as and indigent or in forma pauperis) party cannot afford the "high priced" legal minds and counsel in this modern day and age, there is no excuse and/or right for Lower Courts and plaintiff's attorneys to abuse the in pro per defendant in the lawsuit.

The in pro per party may represent millions of the American citizenry who might be real property owners, homesteaders, war veterans, senior citizens, and/or social security recipients. The Court system must protect these in pro

per citizens to the fullest to guarantee "due process" and a fair and impartial hearing; whether in a Justice Court, or in a Superior Court, Appellate Department.

Decision makers are less likely to be biased and/or prejudiced against an attorney at law as compared to a party in pro per. Judges improper conduct and/or bias would immediately be challenged and objected to by a learned counsel; whereas a humble in pro per party wishes to respect and trust in the fairness, wisdom, and honesty of His Honor.

Petitioner had in fact complied with California Code Of Civil Procedure Sections: 704.910, 704.920, 704.930, and 704.950 pertaining to declared homestead law.

Petitioner in his written brief and in his oral argument had cited 11-precedent stare decisis California law citations dealing with California

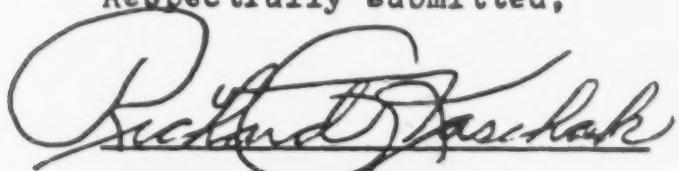
homestead law protection. However the Appellate Court refused to discuss and/or respond either to the written brief and the oral argument in the Court's Opinion. Yet these vital cases stated that "the homestead must be protected to the fullest extent, and the creditor's power to attack it by execution or forced sale must be strictly limited to the cases specified in the homestead law." (Vieth v Klett, 88 CA 2d 23, 198 P2d 314).

Thus Pro Se Petitioner asks:
Is the time ripe for the Supreme Court Of The United States to review and to protect defendant's in pro per Due Process Of Law rights from Lower Court abuse?

C O N C L U S I O N

For all of the foregoing reasons
Pro Se Petitioner, Richard G. Kaschak,
asks the Court to grant the Petition
For Certiorari, and upon review to
reverse the judgment.

Respectfully submitted,



Richard G. Kaschak
Petitioner In Pro Se
Business Address:
1928 Carmen Avenue
Hollywood, Calif. 90068
(213) 462-8803

DATED: December 15, 1990



APPENDIX

MARICOPA TAFT JUSTICE COURT
COUNTY OF KERN, STATE OF CALIFORNIA

Pine Mt. Club Property) Case No. CJ 193
Owners Assoc., Inc., } Rulings of the Court
Plaintiff, } Re: 1) Plaintiff's
vs } Motion To Invalidate Homestead &
Richard G. Kaschak, } 2) Application for
Defendant. } Order of Sale of
Defendant's Dwelling

This cause having come on regularly to be heard the 28th day of October 1988, plaintiff appearing by and through their legal representative Art Santan and defendant appearing in propria persona.

Evidence both oral and documentary being submitted and argument heard thereon the court finds as follows:

1) That there is an overwhelming amount of evidence indicating that the defendant's dwelling in Pine Mountain was not used as his principle place of residence which is one of the essential elements concerning a homestead exemption and the court finds that under CCP704 et seq, that defendant's homestead declaration is invalid.

The court further rules on the application for an order concerning the sale of defendant's property in the affirmative and as follows:

Defendant, Richard G. Kaschak shall file an undertaking double the amount of judgment or in the alternative a surety bond one and one half times the amount of plaintiff's judgment within 30 days; that if no undertaking or bond is filed herein plaintiff shall proceed with the sale of defendant's property as prayed for in their application. Order of sale pursuant to CCP701.510.

Judge, Robert C. Deabenderfer

Dated 12-14-88

IN THE APPELLATE DEPARTMENT
COUNTY OF KERN
CALIFORNIA

PINE MT. CLUB PROPERTY OWNER'S ASSOCIATION, }
Plaintiff & Respondent }
vs. }
RICHARD G. KASCHAK, }
Defendant & Appellant }

No. A-415
Trial Court No:
CJ 193

OPINION

Appeal from an order of the Maricopa-Taft Justice Court, Honorable Robert C. Deabenderfer, presiding, declaring defendants Homestead Declaration invalid.

Counsel for appellant, Richard G. Kaschak, in propria persona.

Counsel for respondent, Monteleone & McCrory by Art Santana.

FACTS

On July 11, 1986, plaintiffs obtained Judgment against defendant for \$11,815.49. The judgment was for delinquent assessments pursuant to certain covenants and conditions on a lot owned by defendant within the Pine Mountain Club.

Defendant appealed the judgment; the

On July 19, 1988, plaintiffs in an effort to satisfy the judgment filed a motion to invalidate a homestead exemption being claimed by appellant on the dwelling located on said lot at 14409 Voltaire Drive, Pine Mountain Club, California.

On December 14, 1988, after having heard evidence on said motion, both oral and documentary, Judge Deabenderfer ruled defendant's Homestead invalid.

A timely appeal of said ruling followed.

ARGUMENT

- 1) Appellant contends the Justice Court had no jurisdiction in declaring the Homestead invalid. Appellant cites California authority giving only the Superior Court jurisdiction to enforce a lien on real property. Appellant's reliance on Article VI, section 5, is misplaced.
- 2) Appellant contends the controversy exceeds the \$25,000 limit imposed on the trial court.

To reach this conclusion, appellant apparently adds the judgment to the homestead exemption of \$45,000 which was invalidated.

Plaintiff proceeded under CCP section 704.740 to 704.790, et al, to attempt the sale of appellant's property to satisfy the judgment. The judgment was not increased by the ruling. It remains the same.

3) Appellant contends the trial court was partial toward respondent and biased and prejudicial toward appellant.

No motion was ever made before on or the date of the hearing. The contention is now untimely. Section 170.6 (2) of the Code Of Civil Procedure required written or oral notice be made before the trial court in which said proceeding is pending. It cannot be raised for the first time on appeal.

4) Finally, appellant claims abuse of legal process. Again, in support of this contention, appellant contends that homestead validity and lien and damages in excess

of \$25,000 is a matter for the Superior Court jurisdiction. This argument has been responded to under contentions 1 and 2.

For the foregoing reasons, the ruling is affirmed.

DATED: February 20, 1990

BIANCHI, J.

WE CONCUR:

RANDALL, P.J.

KELLY, J.

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

RICHARD G. KASCHAK,
Petitioner,

v.

SUPERIOR COURT, KERN COUNTY
APPELLATE DEPARTMENT,

Respondent,

PINE MOUNTAIN CLUB PROPERTY
OWNER'S ASSOCIATION

Real Party In Interest

No. P013845

(Sup Ct. No A-415)

BY THE COURT:^{*}

The petition for writ of mandate, certiorari or other appropriate relief is denied. Petitioner has not provided an adequate record in support of the petition. (Cal. Rules of Court, rule 56 (c).) Petitioner has not shown that he was denied a fair hearing or that the questions presented are of great general interest such that review by way of a proceeding for extraordinary relief is required.

Date: May 3, 1990

Acting P.J.

MARTIN

*Before Martin, Acting P.J., Stone (W.A.) J.
and Brown J.

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

RICHARD G. KASCHAK,
Petitioner,

v.

SUPERIOR COURT, KERN COUNTY
APPELLATE DEPARTMENT,

Respondent,

PINE MOUNTAIN CLUB PROPERTY
OWNER'S ASSOCIATION

Real Party In Interest

No. F013971
(Sup Ct. No. A-415)

BY THE COURT:*

The clerk of this court is directed to
strike the PETITION FOR REHEARING AND FINALITY
OF JUDGMENT and EXHIBITS OF PETITIONER from this
court's file No. F013971 and to place it in
this court's file in Richard G. Kaschak v.
Superior Court, Kern County, case No. 13845.
Said documents are deemed to have been filed
in case No. F013845 on May 14, 1990.

Date: May 31, 1990

Acting P.J.

MARTIN

*Before Martin, Acting P.J., Stone (W.A.), J.**

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

RICHARD G. MASCHAK,
Petitioner,

v.

SUPERIOR COURT, KERN COUNTY
APPELLATE DEPARTMENT,

Respondent,

PINE MOUNTAIN CLUB PROPERTY
OWNER'S ASSOCIATION

Real Party In Interest

)
No. F014265

(Sup Ct. No. A-415)

BY THE COURT: 8

The petition for writ of mandate,
certiorari or other appropriate relief
is denied.

Date: Aug. 9, 1990

Acting P.J.

MARTIN

* Before Martin, Acting P.J., Stone (W.A.), J.,
and Ardaiz, J.

ORDER DENYING REVIEW
AFTER JUDGMENT BY THE COURT OF APPEAL
FIFTH APPELLATE DISTRICT
NO F014265
S017051
IN THE SUPREME COURT OF THE STATE OF
CALIFORNIA
IN BANK

RICHARD G. KASCHAK, Petitioner

v.

KERN COUNTY COURT APPELLATE DEPT, Respondent
PINE MOUNTAIN CLUB PROPERTY OWNERS'
ASSOCIATION, Real Party In Interest

Petition For Review DENIED.

LUCAS

Chief Justice

SUPREME COURT FILED: SEP. 19, 1990
Robert Wandruff Clerk, Deputy
